

U.S. Birthright Citizenship: The Meaning of 'And Subject to the Jurisdiction Thereof'



Immigration Blog

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In July 1868, when the Citizenship Clause of the 14th Amendment was adopted into the Constitution of the United States, it declared: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.” While initially incorporated into the Constitution to overturn the *Scott v. Sandford*, 1856 U.S. LEXIS 472 decision and guarantee citizenship to formerly enslaved individuals, the Citizenship Clause has since become the foundation of birthright citizenship in the United States.

However, the meaning of the phrase “subject to the jurisdiction thereof” has become a current focus in legal interpretation and debate, as renewed challenges to birthright citizenship bring the matter back into the national spotlight. Understanding the historical interpretation of the Citizenship Clause, its recognized exceptions, competing modern interpretations and legal questions currently before the courts is essential to understanding how the Supreme Court may shape the future of citizenship in the U.S., as we anticipate a decision on its interpretation very soon.

Since the clause was added to overturn the Scott v. Sandford decision and secure citizenship for formerly enslaved persons, courts and government officials have generally interpreted the Citizenship Clause to confer citizenship on nearly all individuals born on U.S. soil. This decision was firmly established in the Supreme Court case United States v. Wong Kim Ark, 1898 U.S. LEXIS 1515, which held that a child born to non-citizen parents in the U.S. was considered a U.S. citizen under the Citizenship Clause.

Why does this even matter in 2026? What is the point of challenging longstanding historical interpretation of the Citizenship Clause? A few recent migration and immigration trends are likely responsible for the current administration's focus on who is or should be considered to have been born a U.S. citizen, and who is or should not.

First, the increased number of intending immigrants who arrived in the U.S. after President Biden came into office in 2021 has created a real or perceived increase in the potential number of births in the U.S. to foreigners who themselves might otherwise have no legal pathway to U.S. permanent residence or citizenship. For families in this situation, a U.S.-citizen child could potentially sponsor their parents for lawful permanent residence in the U.S. once that U.S. citizen child turns 21. This puts birthright citizenship squarely in the path of a long-term strategy to gain U.S. citizenship for some families and is seen by some as a loophole that rewards bad actors who broke the law to obtain a potential long-term benefit.

Second, there have been several criminal cases over the past decade that have highlighted an ongoing issue with "birth tourism" to the U.S., prosecuting businesses or their owners who have facilitated pregnant foreign nationals travelling to the U.S. so their child will acquire U.S. citizenship via birthright (jus soli). This can create the same advantage for non-citizen parents and immediate family members as previously discussed, where the U.S.-born child could potentially sponsor their immediate family members for U.S. permanent residence someday.

There have been several major U.S. criminal cases documenting this phenomenon, charging U.S.-based birth-tourism businesses or operators, including businesses like You Win USA Vacation Services Corp., which marketed full packages to Chinese clients, including coaching on lying to consular and CBP officers. Owner Dongyuan Li was found guilty in this case of conspiracy to commit immigration fraud and visa fraud. In another case profiled by a U.S. Senate report (known as the "Portman Report"), a Russian-focused birth tourism firm offered packages to Russian nationals, advertising U.S. citizenship as a key benefit.

For these and many other reasons, birthright citizenship has taken on quite a spotlight since President Trump entered his second term in office in January 2025. Although the idea of birthright citizenship has long been recognized under U.S. law as a foundational principle, the phrase "subject to the jurisdiction thereof" has resurfaced as the subject of national debate.

Historically, administrations of both political parties have interpreted the phrase as extending citizenship to almost everyone born within the United States, with a limited number of recognized exceptions. The exceptions are children of some foreign diplomats, children born to enemy forces during hostile occupation and, before 1924, some Native Americans who owed allegiance to their tribes. Apart from that, all children born on U.S. soil have historically been considered U.S. citizens, as they are fully bound by U.S. law and owe allegiance to the United States.

More recently, however, policymakers have suggested a narrower interpretation of the Citizenship Clause due to

President Trump's January 2025 Executive Order, 90 FR 8449. Under this new view, being "subject to the jurisdiction" of the United States requires more than simply being born on U.S. soil and being subject to its laws. This executive order looked to limit birthright citizenship for certain children born in the U.S. The current administration argued that being "subject to the jurisdiction" of the U.S. requires political allegiance, and not just a physical presence in the country. This competing interpretation has reignited debate over the scope of the Citizenship Clause and set the stage for a legal battle that will likely result in a firm interpretation of the Citizenship Clause's constitutional meaning.

As a result of this, the debate surrounding birthright citizenship is no longer limited to academic discussions of that country's constitutional history. Instead, it has become a notable legal and political issue that requires the Supreme Court to adopt a clear legal stance. While prior administrations have generally interpreted the 14th Amendment as extending citizenship to almost all individuals born on U.S. soil, the current administration's position presents a direct challenge to that understanding.

The debate over birthright citizenship has become one of the most significant constitutional questions that is facing the nation today. While the current administration's interpretation challenges that longstanding view of the Citizenship Clause to grant citizenship to nearly everyone, we expect the Supreme Court to determine the meaning of "subject to the jurisdiction thereof" and, in doing so, shape the future of birthright citizenship.

If you are ready to speak with an immigration attorney about any matters you may have encountered, please contact Lippes Mathias immigration team members Elizabeth M. Klarin (eklarin@lippes.com) or Eileen M. Martin (emartin@lippes.com). Alivia Miller, intern at Lippes Mathias LLP, contributed to this article.

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